

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA. SETTING FORTH AND AMENDING SECTIONS 2-80.41 THROUGH 2-80.48 OF THE PALM BEACH COUNTY CODE, THE "LOCAL PREFERENCE IN PURCHASING ORDINANCE"; PROVIDING FOR A TITLE; AMENDING SECTION 2-80.42 "DEFINITIONS"; DELETING SECTION 2-80.43 "RECIPROCAL PREFERENCE FOR LOCAL BUSINESSES"; AMENDING SECTION 2-80.44 "PREFERENCE FOR LOCAL BUSINESSES"; AMENDING SECTION 2-80.44.1 "PREFERENCE FOR GLADES BUSINESSES"; AMENDING SECTION 2-80.44.2 "PREFERENCE FOR THE USE OF GLADES SUBCONTRACTORS BY LOCAL BUSINESSES"; DELETING SECTION 2-80.45 "INTERLOCAL AGREEMENTS"; PROVIDING FOR WAIVER; PROVIDING FOR RECIPROCITY; AMENDING SECTION 2-80.47 PROVIDING FOR LIMITATIONS; PROVIDING FOR RULES AND REGULATIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida ("Board") enacted Ordinance No. 02-065 which established a local preference for the procurement of goods, services, and the construction of public works projects; and

WHEREAS, due to the unique geographic and economic issues of businesses located in the Glades and the desire to stimulate the Glades economy, the Board enacted Ordinance No. 09-095 which provided for a Glades Local Preference; and

WHEREAS, there is a need to make minor revisions to this Ordinance in order to clarify the intent as to reciprocity and to limit the application of the local preference for purchases made on behalf of the Glades Utility Authority pursuant to an alternative source selection under the Purchasing Code; and

WHEREAS, the Board of County Commissioners desires to amend the Local Preference in Purchasing Ordinance as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1 **Section 1. TITLE:**

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3 This Ordinance shall be entitled the Palm Beach County Local Preference in Purchasing
4 Ordinance.

5 **Section 2.** **Sec. 2-80.42 of the Palm Beach County Code is hereby amended as follows:**

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7 **DEFINITIONS:**

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9 (a) “Glades” means the area from the Broward County line north along Canal L-36 to
10 the Loxahatchee National Wildlife Refuge, thence north to Southern Boulevard along Canal L-40,
11 thence west along Southern Boulevard to a north-south line 1 1/2 miles west of Canal L-8, which
12 coincides with a private agricultural road heading north from Southern Boulevard at that point
13 where State Road 880 intersects Southern Boulevard from the South, thence north along the line of
14 this north-south road to the boundary of the J.W. Corbett Wildlife Management Area, thence east
15 and north along the boundary of the J.W. Corbett Wildlife Management Area to the Martin County
16 line.

17 (b) “Glades business” means a bidder or proposer which has a permanent place of
18 business within the Glades and which holds a business tax receipt issued by Palm Beach County
19 that authorizes the bidder or proposer to provide the goods, services, or construction to be built and
20 which is issued prior to the issuance of the invitation for bids/request for proposals for which a
21 preference is sought. If the business is a joint venture/partnership, it is sufficient for qualification
22 as a Glades business if at least one of the joint venturers/partners meets the requirements set forth
23 in this subsection.

24 (c) “Glades subcontractor” means a subcontractor participating in a bid or proposal for
25 goods, services or construction which has a permanent place of business within the Glades and
26 which holds a business tax receipt issued by Palm Beach County that authorizes the Glades
27 subcontractor to provide goods, services or construction services and which is issued prior to the
28 issuance of the invitation for bids/request for proposals for which a preference is sought. If the
29 subcontractor is a joint venture/partnership, it is sufficient for qualification as a Glades
30 subcontractor if at least one of the joint venturers/partners meets the requirements set forth in this
31 subsection.

32 (d) “Local business” means a bidder or proposer which has a permanent place of
33 business within Palm Beach County and which holds a business tax receipt issued by Palm Beach
34 County that authorizes the bidder or proposer to provide the goods, services, or construction to be

1 purchased and which is issued prior to the issuance of the invitation for bids/request for proposals
2 for which a preference is sought. If the business is a joint venture/partnership, it is sufficient for
3 qualification as a local business if at least one of the joint venturers/partners meets the test set forth
4 in this subsection.

5 (e) "Non-local business" means a bidder or proposer which is not a local business.

6 (f) "Permanent place of business" means headquarters which are located within Palm
7 Beach County or within the Glades for Glades businesses, or a permanent office or other site
8 located within Palm Beach County or within the Glades for Glades businesses, from which a bidder
9 or proposer will produce a substantial portion of the goods or perform a substantial portion of the
10 services to be purchased and which was in existence prior to the issuance of the invitation for
11 bids/request for proposals. A post office box or location at a postal service center shall not
12 constitute a permanent place of business.

13 All other terms and definitions used herein shall have the same meaning as set forth
14 in the Purchasing Ordinance, as it may be amended.

15 **Section 3.** Sec. 2-80.43 of the Palm Beach County Code is hereby deleted.

16 **Section 4.** Sec. 2-80.44 of the Palm Beach County Code is hereby amended as follows:

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18 **PREFERENCE FOR LOCAL BUSINESSES:**

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20 In the event the lowest responsive, responsible bidder or the highest ranked responsive,
21 responsible proposer in the procurement of goods, services or the construction of public works
22 projects is a non-local business, the bids or proposals of all responsive, responsible local businesses
23 may be adjusted by five percent (5%), solely for the purpose of determining bid award. The bid
24 price of local businesses will be adjusted downward by five percent (5%) for purposes of ranking
25 bidders. The proposal score of local businesses will be adjusted upward by five percent (5%) of the
26 total possible points for purposes of ranking proposers. In no event, however, shall the application
27 of this adjustment change the actual bid amount.

28 The determination as to whether a bidder or proposer is a local business shall be made by
29 County staff based upon documentation submitted by the bidder or proposer at the time of bid or
30 proposal submission and pursuant to this Ordinance and to any rules and regulations promulgated
31 by the Purchasing Department. County staff may require a bidder or proposer to provide additional
32 information at any time prior to the award of the contract.

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1 **Section 5.** **Sec. 2-80.44.1 is hereby amended as follows:**

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3 **PREFERENCE FOR GLADES BUSINESSES:**

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5 For any good or service to be utilized in the Glades and for any construction project located
6 in the Glades, the preference described in this Section shall apply and take precedence over the
7 local preference in Section 4. The bids or proposals of all responsive, responsible Glades
8 businesses may be adjusted by five percent (5%), solely for the purpose of determining bid award.
9 The bid price of all responsive, responsible Glades businesses will be adjusted downward by five
10 percent (5%) for purposes of ranking bidders. The proposal score of all responsive, responsible
11 Glades businesses will be adjusted upward by five percent (5%) of the total possible points for
12 purposes of ranking proposers. In no event, however, shall the application of this adjustment
13 change the actual bid amount. A local business which is not a Glades business, but which utilizes
14 Glades subcontractors may be eligible for the preference set forth in Section 6 herein.

15 The determination as to whether a bidder or proposer is a Glades business shall be made by
16 County staff based upon documentation submitted by the bidder or proposer at the time of bid or
17 proposal submission and pursuant to this Ordinance and to any rules and regulations promulgated
18 by the Purchasing Department. County staff may require a bidder or proposer to provide additional
19 information at any time prior to the award of the contract.

20 **Section 6.** **Sec. 2-80.44.2 is hereby amended as follows:**

21 **PREFERENCE FOR USE OF GLADES SUBCONTRACTORS BY LOCAL**
22 **BUSINESSES:**

23 For any construction project located in the Glades, the preference described in this Section
24 shall apply and take precedence over the local preference in Section 4 of this Ordinance. A bidder
25 or proposer in the procurement of construction of public works projects who is a local business but
26 not a Glades business and who utilizes Glades subcontractors for a minimum of 15% of the work
27 may receive a local preference of three percent (3%), solely for the purpose of determining bid
28 award. The bid price of local businesses utilizing Glades subcontractors for a minimum of 15% of
29 the work will be adjusted downward by three percent (3%) for purposes of ranking bidders. The
30 proposal score of local businesses utilizing Glades subcontractors for a minimum of 15% of the
31 work will be adjusted upward by three percent (3%) of the total possible points for purposes of
32 ranking proposers. In no event, however, shall the application of this adjustment change the actual
33 bid amount.

1 A bidder or proposer in the procurement of construction of public works projects who is a
2 local business and who utilizes Glades subcontractors for a minimum of 30% of the work may
3 receive a local preference of four percent (4%), solely for the purpose of determining bid award.
4 The bid price of local businesses utilizing Glades subcontractors for a minimum of 30% of the
5 work will be adjusted downward by four percent (4%) for purposes of ranking bidders. The
6 proposal score of local businesses utilizing Glades subcontractors for a minimum of 30% of the
7 work will be adjusted upward by four percent (4%) of the total possible points for purposes of
8 ranking proposers. In no event, however, shall the application of this adjustment change the actual
9 bid amount.

10 For the purposes of determining Glades subcontractor participation under this Section, the
11 total of Glades subcontractor participation described below will apply:

12 (1) the local business may count towards its preference only that portion of the total
13 dollar value of a contract performed by a Glades subcontractor;

14 (2) the local business may count towards its preference the entire expenditures for
15 materials and equipment purchased by a Glades subcontractor provided that the Glades
16 subcontractor has the responsibility for the installation of the purchased materials and equipment;

17 (3) the local business may count towards its preference the entire expenditure to a
18 Glades subcontractor who is a manufacturer (i.e., a supplier that produces goods from raw materials
19 or substantially alters the goods before resale);

20 (4) the local business may count towards its preference sixty percent (60%) of its
21 expenditures to Glades subcontractors that supply the material but do not manufacture or
22 substantially alter the material; and

23 (5) the local business may count towards its preference second and third tiered Glades
24 subcontractors, provided that the local business identifies the Glades subcontractors as second and
25 third tier subcontractors in its bid/proposal.

26 The determination as to whether a subcontractor is a Glades subcontractor shall be made by
27 County staff based upon documentation submitted by the local bidder or proposer at the time of bid
28 or proposal submission and pursuant to this Ordinance and any rules and regulations promulgated
29 by the Purchasing Department. County staff may require a bidder or proposer to provide additional
30 information at any time prior to the award of the contract with regard to the subcontractor's place of
31 business when a preference is being applied.

1 **Section 7.** **Sec. 2-80.45 is hereby deleted.**

2 **Section 8.** **Sec. 2-80.46 is WAIVER:**

3 The application of this part to any particular purchase may be waived by the Board of
4 County Commissioners where such waiver would be in the best interests of the County.

5 **Section 9. RECIPROCITY:**

6 Should Miami-Dade, Broward, Martin, or Hendry counties extend their local preferences to
7 Palm Beach County businesses, the preference for local businesses set forth herein may be made
8 available to those businesses whose permanent place of business are within said counties.
9 However, the bid received from the lowest responsive, responsible local business or the proposal
10 received from the highest ranked responsive, responsible local business shall not be supplanted
11 by a business utilizing the Palm Beach County local preference through reciprocity.

12 **Section 10.** **Sec. 2-80.47 of the Palm Beach County Code is hereby amended as follows:**

13 **LIMITATIONS:**

14 (a) The provisions of this Ordinance shall apply only to procurements which are above the
15 formal bid threshold as set forth in the Palm Beach County Code.

16 (b) The provisions of this Ordinance shall not apply where prohibited by federal, state or
17 Florida law or where prohibited under the conditions of any grant.

18 (c) The provisions of this Ordinance shall not apply to any purchase exempted from the
19 provisions of the Palm Beach County Purchasing Code.

20 (d) The provisions of this Ordinance shall in no way limit the right of the Board of County
21 Commissioners to compare the quality of the goods and/or services proposed for purchase and the
22 qualifications, character, responsibility and fitness of any person or entity submitting bids or
23 proposals or to make an award it deems to be in the best interest of the County

24 (e) In procurements where price is the only factor for selection, the provisions of this
25 Ordinance shall not be applied where its application would result in an award which exceeds the
26 otherwise lowest responsive, responsible bid by \$100,000.00.

27 (f) The provisions of this Ordinance shall not apply to contracts made under the
28 Consultant's Competitive Negotiation Act (CCNA), Fla. Stat. §287.055, as may be amended from
29 time to time.

30 (g) A local business or a Glades business or a local business utilizing Glades
31 subcontractors receiving a preference under the Palm Beach County Small Business Enterprise

1 Ordinance for a particular purchase shall not be eligible to receive the preferences established in
2 this Ordinance for that same purchase. In case of any inconsistency between the provisions of this
3 Ordinance and the Small Business Enterprise Ordinance, the Small Business Enterprise Ordinance
4 shall take precedence.

5 (h) Decisions concerning the application of this Ordinance shall be made by the
6 Department of Purchasing pursuant to this Ordinance and any rules and regulations promulgated by
7 the County Administrator or his/her designee and shall be final as to the County provided such
8 decision may be protested pursuant to the protest process set forth in the Purchasing Code.

9 (i) The provisions of this Ordinance shall not be applied to any procurement where the
10 local nature of a business has been addressed through the scoring criteria.

11 (j) The provisions of this Ordinance shall not be applied to purchases made pursuant to
12 the alternative source selection for Glades Utility Authority ("GUA") purchases under \$100,000 as
13 set forth in the Purchasing Code.

14 **Section 11. RULES AND REGULATIONS:**

15 The County Administrator or his/her designee shall develop and promulgate rules and
16 regulations which shall govern the application and administration of this part.

17 **Section 12. REPEAL OF LAWS IN CONFLICT:**

18 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
19 repealed to the extent of such conflict.

20 **Section 13. SEVERABILITY:**

21 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
22 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
23 holding shall not affect the remainder of this Ordinance.

24 **Section 14. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

25 The provisions of this Ordinance shall become and be made a part of the Palm Beach
26 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such,
27 and the word "ordinance" may be changed to "section," "article," or other appropriate word.

28 **Section 15. EFFECTIVE DATE:**

29 The provisions of this Ordinance shall become effective upon filing with the Department of
30 State.

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APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
County, Florida, on this the 20th day of April, 2010.

**SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: *Sharon R. Bock*
Deputy Clerk

By: *Burt Aaronson*
Burt Aaronson, Chair

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: *[Signature]*
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 22nd day of
April, 2010.

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STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk and Comptroller
certify this to be a true and correct copy of the original
filed in my office on April 20, 2010
dated at West Palm Beach, Florida 4/20/10
By: *Diane Browne*
Deputy Clerk

